

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Item 7

Agenda ID 13688

ENERGY DIVISION

RESOLUTION E-4707 (Rev.1)

March 12, 2015

R E D A C T E D
R E S O L U T I O N

Resolution E-4707. Southern California Edison Company (SCE) requests approval of a renewables portfolio standard (RPS) eligible power purchase agreement with Panoche Valley Solar, LLC.

PROPOSED OUTCOME

- This resolution approves cost recovery for the long-term renewable energy power purchase agreement between SCE and Panoche Valley Solar, LLC. The power purchase agreement is approved without modification.

SAFETY CONSIDERATIONS:

- The power purchase agreement requires the seller of the generation to comply with all applicable safety requirements relating to the project, including environmental laws.

ESTIMATED COST:

- Actual costs of the power purchase agreement are confidential at this time.

By Advice Letter 3119-E filed on October 27, 2014.

SUMMARY

Southern California Edison Company's (SCE) renewable energy power purchase agreement (PPA) with Panoche Valley Solar (Panoche) complies with the Renewables Portfolio Standard (RPS) procurement guidelines and is approved without modification.

SCE filed Advice Letter (AL) 3119-E on October 27, 2014, requesting California Public Utilities Commission (Commission or CPUC) review and approval of a 20-year renewable energy PPA with Panoche (the Panoche AL). The PPA was

executed through SCE's 2013 RPS solicitation (2013 RPS RFO). Pursuant to the PPA, RPS-eligible generation will be purchased from the proposed Panoche facility. The Panoche facility is to be located in San Benito County and has a capacity of approximately 247 megawatts (MW).

This Resolution approves the Panoche PPA. SCE's execution of this PPA is consistent with SCE's 2013 RPS Procurement Plan (RPS Plan), which the Commission approved in Decision (D.) 13-11-024. In addition, RPS deliveries pursuant to the Panoche PPA are reasonably priced and the related costs to SCE are fully recoverable in rates over the life of the Panoche PPA, subject to Commission review of SCE's administration of the PPA.

The following table provides a summary of the Panoche PPA:

Table 1: Summary of Panoche PPA:

Seller	Generation Type	Size (MW)	Estimated Average Energy (GWh/Yr)	Forecasted Commercial Operation Date	Term of Agreement (Years)	Location
Panoche Valley	Solar photovoltaic ("PV") - single axis tracking	247	666	January 1, 2019	20	Paicines, San Benito County, CA

BACKGROUND

Overview of the Renewables Portfolio Standard (RPS) Program

The California RPS program was established by Senate Bill (SB) 1078, and has been subsequently modified by SB 107, SB 1036, and SB 2 (1X).¹ The RPS program is codified in Public Utilities Code Sections 399.11-399.31.² Under

¹ SB 1078 (Sher, Chapter 516, Statutes of 2002); SB 107 (Simitian, Chapter 464, Statutes of 2006); SB 1036 (Perata, Chapter 685, Statutes of 2007); SB 2 (1X) (Simitian, Chapter 1, Statutes of 2011, First Extraordinary Session).

² All further references to sections refer to Public Utilities Code unless otherwise specified.

SB 2 (1X), the RPS program administered by the Commission requires each retail seller to procure eligible renewable energy resources so that the amount of electricity generated from eligible renewable resources be an amount that equals an average of 20 percent of the total electricity sold to retail customers in California for compliance period 2011-2013; 25 percent of retail sales by December 31, 2016; and 33 percent of retail sales by December 31, 2020.³

Additional background information about the Commission's RPS Program, including links to relevant laws and Commission decisions, is available at <http://www.cpuc.ca.gov/PUC/energy/Renewables/overview.htm> and <http://www.cpuc.ca.gov/PUC/energy/Renewables/decisions.htm>.

NOTICE

Notice of the Panoche AL was made by publication in the Commission's Daily Calendar. SCE states that a copy of the Advice Letter was mailed and distributed to persons on the R.11-05-005 service list in accordance with Section 4 of General Order 96-B.

PROTESTS

SCE's Panoche AL was timely protested by the Imperial Irrigation District (IID), the Office of Ratepayer Advocates (ORA), and jointly by the Sierra Club, Defenders of Wildlife, Santa Clara Valley Audubon Society, and Audubon California (Joint Parties). Specifically, IID recommends that the AL 3119-E be rejected without prejudice so that the Panoche PPA may be considered in a formal Commission proceeding. ORA and the Joint Parties recommend rejection of the Panoche AL on the basis of PPA viability, project viability, and project economics. Additionally, Panoche and the Independent Energy Producers Association (IEP) filed late responses recommending approval of the Panoche AL on November 24, 2014 and December 1, 2014, respectively.

³ D.11-12-020 established a methodology to calculate procurement requirement quantities for the three different compliance periods covered in SB 2 (1X) (2011-2013, 2014-2016, and 2017-2020).

SCE responded to the three protests on November 24, 2014. SCE recommends rejection of the three protests asserting that the PPA is reasonable from a project selection, cost, and risk perspective, and that a formal proceeding is not required to consider the Panoche PPA.

DISCUSSION

SCE requests approval of a renewable energy power purchase agreement with Panoche

On October 27, 2014, SCE filed the Panoche AL requesting Commission approval of a long-term RPS eligible PPA with Panoche. The proposed, 247 MW solar photovoltaic (PV) project is to be located in San Benito County's Panoche Valley and is being developed by PV2 Energy. Pursuant to the Panoche PPA, SCE is to begin purchasing generation from Panoche beginning January 1, 2019. The expected annual generation to be purchased from the project is 666 Gigawatt-hours (GWh). This generation could count towards SCE's RPS requirements in Compliance Period 2017-2020.

SCE requests that the Commission issue a resolution that:

1. Approves the Panoche PPA in its entirety;
2. Finds that the Panoche PPA is consistent with SCE's 2013 RPS Procurement Plan;
3. Finds that the Panoche PPA is compliant with the Emissions Performance Standard;
4. Finds that any procurement pursuant to the Panoche Valley Contract is procurement from an eligible renewable energy resource for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Section 399.11 et seq.), Decision 03-06-071, or other applicable law; and,
5. Finds that the Panoche PPA, and SCE's entry into it, is reasonable and prudent for all purposes, including, but not limited to, recovery in rates of payments made pursuant to the Panoche PPA, subject only to further review with respect to the reasonableness of SCE's administration of the Panoche PPA.

Energy Division Evaluated the Panoche PPA based on the following criteria:

- Consistency with SCE's 2013 RPS Procurement Plan and RPS Procurement Portfolio Need;
- Consistency with SCE's Least-Cost, Best-Fit requirements;
- Net Market Value and Cost Reasonableness;
- Consistency with RPS Standard Terms and Conditions;
- Consistency with Portfolio Content Categories Requirements;
- Consistency with the Long-Term Contracting Requirement;
- Consistency with Independent Evaluator review requirements;
- Consistency with Procurement Review Group Requirements;
- Compliance with the Interim Greenhouse Gas Emissions Performance Standard; and,
- Consistency with PPA Viability Assessment and Project Development Status.

Consistency with SCE's 2013 RPS Procurement Plan

In SCE's 2013 RPS Procurement Plan (2013 RPS Plan) SCE provided an assessment of supply and demand to determine the optimal mix of renewable generation resources; description of potential RPS compliance delays; status update of projects within its RPS portfolio; and an assessment of project failure and delay risk within its RPS portfolio.⁴ Specifically, SCE explained that its assessment for determining need is based on bundled retail sales, the performance and variability of existing generation, the likelihood of new generation achieving commercial operation, expected commercial on-line dates, technology mix, expected curtailment, and the impact of pre-approved procurement programs, among other factors. Based on that assessment, SCE stated that it had an RPS procurement need beginning in Compliance Period 2017-2020.

⁴ Section 399.13(a)(5).

SCE stated its intention to procure additional RPS-eligible resources in order to satisfy its RPS requirements. Specifically, it called for the issuance of a competitive solicitation for the purchase of RPS-eligible energy with deliveries beginning on or after January 1, 2016. In addition, SCE sought offers that would qualify as Portfolio Content Category 1 and be for at least 10 years in length.

Based on SCE's RPS portfolio needs described in its 2013 RPS Plan, the Panoche PPA is consistent with SCE's 2013 RPS Plan. The Panoche PPA is for generation from a proposed renewable energy (assuming California Energy Commission certification as an eligible renewable resource) with deliveries to begin on January 1, 2019 and continuing for 20 years, such that deliveries would begin during Compliance Period 2017-2020. See Confidential Appendix A for details on SCE's forecasted RPS procurement needs.

The Panoche PPA is consistent with SCE's 2013 RPS Procurement Plan, approved by D.13-11-024.

Consistency with SCE's least-cost best-fit (LCBF) methodology

In D.04-07-029 and D.12-11-016, the Commission directs the utilities to use certain criteria in their LCBF selection of renewable resources.⁵ The decisions offers guidance regarding the process by which the utility ranks bids in order to select or "shortlist" the bids with which it will commence negotiations. As described in its RPS Procurement Plan, SCE's LCBF bid evaluation includes a quantitative analysis and qualitative criteria. SCE's quantitative analysis or market valuation includes evaluation of price, transmission costs, congestion costs, debt equivalence costs, as well as, energy, resource adequacy, and congestion benefits. SCE's qualitative analysis focused on factors, such as location, project development progress, resource diversity, counterparty concentration, etc., to eliminate or add projects to its shortlist. SCE's 2013 RPS solicitation protocols, including its LCBF methodology, as described above, was approved by the Commission in D.13-11-024.

On April 21, 2014, SCE filed AL 3029-E requesting approval of its "2013 RPS Short List Report." The 2013 Shortlist Report included a report on SCE's evaluation and selection process of its 2013 RPS shortlist as well as an

⁵ See, § 399.13(a)(4)(A).

independent evaluator report regarding SCE's evaluation and selection of offers.⁶ In the Panoche AL, SCE further explains that the Panoche PPA is the result of SCE's 2013 RPS solicitation and that it evaluated and shortlisted the Panoche offer consistent with its 2013 LCBF evaluation methodology.

See the "Net Market Value and Cost Reasonableness" section of this resolution for a discussion of how the Panoche PPA compares to other offers from SCE's 2013 RPS solicitation and comparable RPS contracts executed by SCE in the 12 months prior to executing the Panoche PPA. In addition, see Confidential Appendix A for SCE's LCBF evaluation of the Panoche PPA.

The Panoche PPA was evaluated consistent with the LCBF methodology described in SCE's 2013 RPS Procurement Plan.

Net Market Value and Cost Reasonableness

The Commission's reasonableness review for RPS PPAs includes a comparison of the proposed PPA's net market value (the result of the LCBF calculation) and price relative to other RPS offers received in recent RPS solicitations. Additionally, the Commission compares the PPA's net market value to comparable contracts executed by the utility in the 12 months prior to the proposed PPA's execution date. Using this methodology and the confidential analysis provided by SCE in AL 3119-E, the Commission determines that the net market value of the Panoche PPA is comparable to other RPS offers received by SCE and that the costs of the Panoche PPA are reasonable. See Confidential Appendix A for a detailed discussion of the analysis.

The Panoche PPA compares reasonably from a net market value and cost basis relative to RPS offers received in SCE's 2013 RPS solicitation and comparable contracts executed by SCE in the 12 months prior to executing the Panoche PPA.

Payments made by SCE under the Panoche PPA are fully recoverable in rates over the life of the PPA, subject to Commission review of SCE's administration of the PPA and any other conditions contained herein or required by law.

⁶ AL 3029-E became effective on July 8, 2014.

Consistency with RPS Standard Terms and Conditions (STCs)

The Commission adopted a set of standard terms and conditions (STCs) required in RPS contracts, five of which are considered “non-modifiable.” The STCs were compiled in D.08-04-009 and subsequently amended in D.08-08-028. More recently, the Commission further refined some of the STCs in D.10-03-021, as modified by D.11-01-025, and D.13-11-024.

The Panoche PPA includes the Commission adopted RPS “non-modifiable” standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, and D.13-11-024.

Consistency with Portfolio Content Categories

In D.11-12-052, the Commission defined and implemented portfolio content categories for the RPS program and authorized the Director the Energy Division to require the investor-owned utilities to provide information regarding the proposed contract’s portfolio content category classification in each advice letter seeking Commission-approval of an RPS contract. The purpose of the information is to allow the Commission to evaluate the claimed portfolio content category of the proposed RPS PPA and the risks and value to ratepayers if the proposed PPA ultimately results in renewable energy credits in another, less preferred, portfolio content category.

In the Panoche AL, SCE claims that the procurement pursuant to the PPA will be classified as Portfolio Content Category 1. To support its claim, SCE asserts that the Panoche facility is located in California, an RPS-eligible resource that expects to have its first point of interconnection within the CAISO, a California balancing area, and that pursuant to the Panoche PPA the RECs associated with the electricity from Panoche will be delivered to SCE and not unbundled or transferred to another owner.

Consistent with D.11-12-052, SCE provided information in the Panoche AL regarding the expected portfolio content category classification of the renewable energy credits procured pursuant to the Panoche PPA.

In this resolution, the Commission makes no determination regarding the Panoche PPA’s portfolio content category classification. The RPS contract evaluation process is separate from the RPS compliance and portfolio content category classification process, which require consideration of several factors

based on various showings in a compliance filing. Thus, making a portfolio content category classification determination in this resolution regarding the procurement considered herein is not appropriate. SCE should incorporate the procurement resulting from the approved Panoche PPA and all applicable supporting documentation to demonstrate portfolio content category classification in the appropriate compliance showing(s) consistent with all applicable RPS program rules.

Consistency with Long-Term Contracting Requirement

In D.12-06-038, the Commission established a long-term contracting requirement that must be met in order for retail sellers to count RPS procurement from contracts less than 10 years in duration for compliance with the RPS program.⁷ In order for the procurement from any short-term contract(s) signed after June 1, 2010, to count for RPS compliance, the retail seller must execute long-term contract(s) in the same compliance period in which the short-term contract(s) is signed. The volume of expected generation in the long-term contract(s) must be sufficient to cover the volume of generation from the short-term contract(s).⁸

The Panoche PPA is for a 20 year term and was executed during Compliance Period 2014-2016.

Because the Panoche PPA is greater than 10 years in length, the long-term contracting requirement does not apply to SCE's procurement pursuant to the Panoche PPA, and the Panoche PPA will contribute to SCE's long-term contracting requirement established in D.12-06-038 for Compliance Period 2014-2016.

⁷ For the purposes of the long-term contracting requirement, contracts of less than 10 years duration are considered "short-term" contracts. (D.12-06-038.)

⁸ Pursuant to D.12-06-038, the methodology setting the long-term contracting requirement is: 0.25% of Total Retail Sales in 2010 for the first compliance period; 0.25% of Total Retail Sales in 2011-2013 for the second compliance period; and 0.25% of Total Retail Sales in 2014-2016 for the third compliance period.

Independent Evaluator Review

SCE retained Merrimack Energy Group, Inc. as the independent evaluator (“IE”) to oversee its 2013 RPS solicitation. In addition, Merrimack oversaw the negotiations with Panoche and evaluated the overall merits of the Panoche PPA. The Panoche AL included a public and confidential version of the IE’s report.

In the IE’s opinion, the Panoche PPA was reasonably negotiated with contract terms that when taken as a whole appropriately protect the interests of SCE’s ratepayers. The IE also concludes that the project is very mature in terms of project development. Overall, the IE states that he agrees with SCE that the Panoche PPA merits Commission approval.

Consistent with D.06-05-039, an independent evaluator oversaw SCE’s negotiations with Panoche.

Procurement Review Group (PRG)

The PRG was initially established in D.02-08-071 to review and assess the details of the IOU’s overall procurement strategy, solicitations, specific proposed procurement contracts and other procurement processes prior to submitting filings to the Commission as a mechanism for procurement review by non-market participants.

Participants in SCE’s PRG include representatives from the ORA, Department of Water Resources, Union of Concerned Scientists, The Utility Reform Network, and the California Utility Employees. In the Panoche AL, SCE asserts that the proposed execution Panoche PPA was presented to its PRG at the July 16, 2014 meeting. Attendee organizations on July 16, 2014 were Energy Division, ORA, The Utility Reform Network, and California Utility Employees.

Consistent with D.02-08-071, SCE’s Procurement Review Group participated in the review of the Panoche PPA.

Compliance with the Interim Greenhouse Gas Emissions Performance Standard (EPS)

Pub. Util. Code §§8340 and 8341 require that the Commission consider emissions costs associated with new long-term (five years or greater) baseload power contracts procured on behalf of California ratepayers.⁹

D.07-01-039 adopted an interim EPS that establishes an emission rate for obligated facilities at levels no greater than the greenhouse gas emissions of a combined-cycle gas turbine power plant. Generating facilities using certain renewable resources are deemed compliant with the EPS.¹⁰

The Panoche PPA is not covered procurement subject to the EPS because the generating facility has a forecast annualized capacity factor of less than 60 percent and therefore is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim EPS Rules.

PPA Viability and Project Development Status

Developer:

The Panoche solar PV facility is being developed by PV2 Energy, LLC.¹¹

Technology and Quality of Resource:¹²

The Panoche project will use solar PV panels that have been technically proven on utility-scale generation projects. Additionally, given the project's location and associated resource quality, SCE believes that Panoche will be able to meet the terms of the PPA.

⁹ "Baseload generation" is electricity generation at a power plant "designed and intended to provide electricity at an annualized plant capacity factor of at least 60%." Pub. Util. Code §8340 (a).

¹⁰ D.07-01-039, Attachment 7, p. 4.

¹¹ Panoche Valley Solar website: <http://panochevalleysolar.com>, accessed December 5, 2014.

¹² The Panoche AL, p.16.

Site Control and Permitting Status:

Panoche has secured site control to support the entire project.¹³ The project site was most recently used for grazing and the developer has received approval for cancellation of Williamson Act contracts. Panoche has obtained pre-RPS certification¹⁴ from the California Energy Commission (CEC), a conditional use permit from San Benito County, and additional permits are in progress.

Interconnection Status:

The Panoche facility will interconnect at the Q829 230 kilovolt (kV) switching station which connects to the Pacific Gas and Electric Company's Moss-Panoche/Coburn-Panoche 230 kV transmission line and intersects the project site.^{15, 16} Also, the developer has executed a Large Generator Interconnection Agreement (LGIA) for the project.¹⁷

SCE states that the Panoche PPA is based on its 2013 RPS pro forma agreement. Based on the terms and conditions of the PPA and the development progress, it is reasonable to expect that Panoche will meet the terms and conditions of its PPA.

Safety Considerations

California Public Utilities Code Section 451 requires that every public utility maintain adequate, efficient, just, and reasonable service, instrumentalities, equipment and facilities to ensure the safety, health, and comfort of the public. The PPA between SCE and Panoche requires Panoche to comply with all applicable requirements of law relating to the projects including those related to planning, construction, ownership, decommissioning and/or operation of the

¹³ The Panoche AL, p.17.

¹⁴ The CEC Pre-Certification identification number is 60858C.

¹⁵ The Panoche AL, p.2

¹⁶ www.cosb.us/Solargen.

¹⁷ "California ISO List of LGIA/SGIA (as of 11/6/14)," accessed on December 5, 2014 at: www.caiso.com/Documents/ListLargeGeneratorInterconnection_SmallGeneratorInterconnectionAgreements.pdf.

projects. Based on the information before us, these contracts do not appear to result in any adverse safety impacts on facilities or operations of SCE.

Protests to the Panoche AL are denied

IID recommends that the Panoche AL be rejected without prejudice

IID recommends in its protest that the Panoche AL, along with SCE ALs 3120-E, 3121-E, 3122-E, 3124-E, 3125-E, and 3126-E, should be denied without prejudice because a formal Commission proceeding is necessary to review SCE's requests. First, IID asserts that bids for IID-interconnected projects offered to SCE in its 2013 RPS solicitation were unreasonably evaluated because IID-related transmission network upgrade costs were considered, which resulted in the double-counting of costs leading to a precedent against IID-interconnected projects. IID argues that the inclusion of the IID transmission network upgrade costs is not consistent with previous Commission decisions related to LCBF and the Sunrise transmission powerlink.¹⁸ Second, IID asserts that the cumulative approval that SCE is seeking through the above mentioned seven advice letters is unprecedented and merits examination in a formal proceeding.

In reply comments, SCE asserts that IID's protest is without merit and that its 2013 RPS solicitation was fair and reasonable. SCE argues that IID's protest is incorrect and that SCE's inclusion of transmission costs for IID-interconnected projects as a qualitative factor is not a double counting of costs because both CAISO and IID-interconnected generators are reimbursed for transmission network upgrade costs. Further, SCE argues that its consideration of transmission costs for IID-interconnected projects ensures equal treatment of IID and CAISO-interconnected projects. Lastly, SCE asserts that its request for approval of eight RPS PPAs in seven ALs is not unprecedented because the IOUs have been allowed to seek approval of RPS contracts through Tier 3 advice letters since the beginning of the RPS program.

Consideration and review of the Panoche AL via the Commission's advice letter process is reasonable and a formal proceeding is not necessary for several reasons. First, the Commission agrees with SCE that its inclusion of transmission upgrade costs in its LCBF evaluation of IID-interconnected projects does not

¹⁸ Specifically, IID references D.03-06-071, D.04-07-029, and D.12-11-016.

result in the double-counting of transmission costs. For both CAISO and IID-interconnected projects the generator initially funds the transmission network upgrade costs, which are later reimbursed to the generator.¹⁹ While the reimbursement mechanism is different for the CAISO and IID-interconnected projects, in both instances it is ratepayers that ultimately fund the transmission costs. Thus, as with CAISO-interconnected projects, it is reasonable to treat transmission costs as separate project costs, similar to price, congestion, and transmission costs, for IID-interconnected projects when evaluating offers using LCBF methodologies.

Second, as stated above, both SCE's 2013 RPS solicitation protocols, including its LCBF evaluation methodology and its shortlist were approved.²⁰ Also, in this Resolution the Panoche PPA is found to be consistent with SCE's 2013 RPS Procurement Plan. Thus, there is no reason for evidentiary hearings or the filing of an application to further review the consistency of SCE's LCBF evaluation methodology or reasonableness of its 2013 RPS shortlist.

Third, SCE's request for review and approval of an RPS contract via an advice letter is consistent with the RPS procurement approval process adopted in D.02-08-071 and D.03-06-071. Accordingly, SCE's request for approval of the Panoche AL through an advice letter is not unprecedented nor requires a formal hearing.

Therefore, for the reasons described above, IID's protest recommending the Panoche AL be rejected without prejudice is denied.

ORA and the Joint Parties recommend rejection of the Panoche AL

¹⁹ For CAISO-interconnected projects, transmission network upgrade costs are reimbursed to the generator over a five year period beginning on the commercial operation date (CAISO Fifth Replacement Electronic Tariff, Appendix Y). For IID-interconnected projects, transmission network upgrade costs are reimbursed to the generator via transmission rate credits (Imperial Irrigation District Open Access Transmission Tariff, Attachment J).

²⁰ SCE's protocols were approved as part of SCE's 2013 RPS Plan in D.13-11-024. SCE's 2013 RPS shortlist was submitted in AL 3029-E and is effective as of July 8, 2014.

ORA and the Joint Parties recommend rejection of the Panoche AL on the basis of poor PPA viability, poor project viability, and project economics. In support of their recommendation, ORA and the Joint Parties argue that numerous state and federal permits are still needed and the likely timeline of attaining the permits will affect the viability and economics of the PPA.²¹ Specifically, they assert that the time required for obtaining the necessary permitting does not allow for the project to attain commercial operation by December 31, 2016, which is necessary if the project is to obtain the desired amount of federal investment tax credits (ITCs). They assert that if ITCs are not obtained, then the economics of the project changes which, in turn, negatively affect the viability of the executed Panoche PPA.

Additionally, the Joint Parties argue that the project is proposed for an extremely environmentally sensitive area, which affects the viability of the project. Specifically, the Joint Parties assert that it is doubtful that the developer will be able to meet state and federal Endangered Species Act (ESA) requirements because of several species located in the project area.²² In addition, they argue that the project has already been subject to litigation and will likely face additional challenges under the ESA once CEQA and National Environmental Protection Act (NEPA) reviews for the Panoche project are complete. Also, the Joint Parties disagree with IE statements that consider the project very mature in developmental status given the project's current permitting status.

Additionally, ORA and the Joint Parties argue that from a ratepayer perspective the Panoche AL should be rejected. Specifically, the Joint Parties argue that by SCE executing a PPA with a high risk project it could be missing an opportunity of executing with an alternative project that could be able to take advantage of the ITC. Also, ratepayer impacts could result if SCE needed to replace a failed Panoche PPA at a later time if prices increase, potentially due to a lower ITC.

²¹ The Joint Parties state that the project requires supplemental California Environmental Quality Act (CEQA) review from the County of San Benito for land use permit, supplemental environmental review from California Department of Fish and Wildlife, and U.S. Army Corps of Engineers National Environmental Protection Act (NEPA) review for Section 404 permit, as well as several other permits.

²² Specifically, the Joint Parties note that the San Joaquin kit fox, blunt-nosed leopard lizard, and giant kangaroo rat are located in project area and are all protected species.

Lastly, ORA argues that the project should not be approved because it is not needed to meet its 2014 RPS solicitation target. ORA asserts that due to the large number of other contracts executed from SCE's 2013 RPS solicitation, SCE can meet its compliance needs without the Panoche PPA.

In its reply, SCE recommends rejecting both ORA's and the Joint Parties protests. SCE asserts that the Panoche PPA represents reasonable value to its ratepayers and does not pose a risk to SCE customers because any risk related to the economics of the project is risk to the developer. SCE further argues that while the generation from the project is expected to contribute to its third compliance period needs, its strategy to procure on a pro-rata basis and risk-adjust its RPS portfolio forecast allows SCE to adjust for potential project delay or failure.

SCE also asserts in its reply that complete environmental review and receiving all permits is not required for Commission approval. In addition, SCE asserts that the Commission has been clear regarding its role in the review of proposed PPAs and that it is separate from the environmental review and assessment process.

In their responses, both Panoche and IEP recommend approval of the Panoche AL.²³ Panoche asserts that the status of environmental permits for the project is not relevant to Commission approval of the Panoche PPA. Panoche also argues that denial of ORA's and the Joint Parties protests is appropriate because the protests do not raise any new issues and the risks alleged in their protests are applicable to all large projects. Lastly, IEP asserts that the mere possibility of delay should not be a reason for rejecting the Panoche PPA. IEP also argues that ORA's objections are inconsistent with recent legislation.²⁴

We agree with SCE that our review and approval of the PPA is limited to the criteria reviewed within this Resolution as listed above [p. 5] and that the developer is ultimately responsible for meeting the terms and conditions of the

²³ Consistent with GO-96-B rules regarding protests, responses, and replies, information provided in the late responses is considered in this resolution only to the extent that it pertains to the review of the Panoche AL.

²⁴ IEP refers to AB 327 (Statutes of 2013), which, in part, gives the Commission the authority to increase RPS requirements. Implementation of AB 327 is currently scoped in Rulemaking 11-05-005.

Panoche PPA. Further, the Commission is granting no rights to develop property and is not binding itself or any other party to any particular development plan by this resolution. The Commission merely finds that, should the Panoche project come to fruition, SCE may account for deliveries from the facility as a renewable energy resource and may recover certain costs in rates. Therefore, ORA's and the Joint Parties' protests are denied.

RPS Eligibility and CPUC Approval

Pursuant to Section 399.13, the CEC certifies eligible renewable energy resources. Generation from a resource that is not CEC-certified cannot be used to meet RPS requirements. To ensure that only CEC-certified energy is procured under a Commission-approved RPS contract, the Commission has required standard and non-modifiable "eligibility" language in all RPS contracts. That language requires a seller to warrant that the project qualifies and is certified by the CEC as an "Eligible Renewable Energy Resource," that the project's output delivered to the buyer qualifies under the requirements of the RPS, and that the seller uses commercially reasonable efforts to maintain eligibility should there be a change in law affecting eligibility.²⁵

The Commission requires a standard and non-modifiable clause in all RPS contracts that requires "CPUC Approval" of a PPA to include an explicit finding that "any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Buyer's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), D.11-12-020 and D.11-12-052, or other applicable law."²⁶

Notwithstanding this language, given that the Commission has no jurisdiction to determine whether a project is an "Eligible Renewable Energy Resource" for RPS purposes, this finding and the effectiveness of the non-modifiable "eligibility" language is contingent on CEC's certification of the Panoche project as an "Eligible Renewable Energy Resource." The contract language that procurement

²⁵ See, e.g. D. 08-04-009 at Appendix A, STC 6, Eligibility.

²⁶ See, e.g. D. 08-04-009 at Appendix A, STC 1, CPUC Approval.

pursuant to the Panoche PPA “is procurement from an eligible renewable energy resource” must be a true statement at the time of the first delivery of energy, not at the signing of the PPA or at the issuance of this Resolution.

While we include the required finding here, this finding has never been intended, and shall not be read now, to allow the generation from a non-RPS-eligible resource to count towards an RPS compliance obligation absent CEC certification. Nor shall such finding absolve the seller of its obligation to obtain CEC certification, or the utility of its obligation to pursue remedies for breach of contract. Such contract enforcement activities shall be reviewed pursuant to the Commission’s authority to review the utilities’ administration of such contracts.

Confidential Information

The Commission, in implementing Section 454.5(g), has determined in D.06-06-066, as modified by D.07-05-032, that certain material submitted to the Commission as confidential should be kept confidential to ensure that market sensitive data does not influence the behavior of bidders in future RPS solicitations. D.06-06-066 adopted a time limit on the confidentiality of specific terms in RPS contracts. Such information, including price, is confidential for three years from the date the contract states that energy deliveries begin, or until one year following contract expiration, except contracts between IOUs and their affiliates, which are public.

The confidential appendices, marked “[REDACTED]” in the public copy of this resolution, as well as the confidential portions of the advice letter, remain confidential at this time.

COMMENTS

Section 311(g)(1) provides that this resolution must be served on all parties and subject to at least 30 days public review and comment prior to a vote of the Commission. Section 311(g)(2) provides that this 30-day period may be reduced or waived upon the stipulation of all parties in the proceeding.

The 30-day comment period for the draft of this resolution was neither waived or reduced. Accordingly, this draft resolution was mailed to parties for comments on February 2, 2015.

Comments were filed in a timely fashion on February 23, 2015 by San Benito County Joint Parties,²⁷ IID, and the Joint Parties.

We carefully considered comments which focused on factual, legal, or technical errors and made appropriate changes to the draft resolution.

The San Benito County Joint Parties comment that the Commission should approve the Panoche AL

In San Benito County Joint Parties comments they assert that the Panoche project will provide lower energy costs; the make use of an existing transmission line; generate economic development; and be a net environmental benefit.

IID comments that the draft resolution should be modified for accuracy and provide direction regarding future procurement efforts and processes

In IID's comments, it asserts that SCE modified its LCBF methodology after offers were received and recommends that for the purpose of accuracy the draft resolution be modified to state that "SCE revised its LCBF methodology during the offer evaluation process, and after proposals were submitted."²⁸ In making its recommendation, IID asserts that the IE report submitted with AL 3120-E states that SCE's methodology had changed mid-stream of the evaluation process.

We decline to make the modification that IID recommends. The IE does not state that SCE modified its evaluation methodology after solicitation offers were

²⁷ The San Benito County Joint Parties are: San Benito County Farm Bureau, San Benito County Board of Supervisors, City of Hollister, San Benito County Cattlemen's Association, Monterey County Business Council, San Benito County Business Council, Joint Venture Monterey Bay, Marvin L. Jones, Silviera Construction, Eduardo Vargas, Lori Woodle, DLG Printing and Graphics, San Benito County Planning Commission, Marcos Ramirez, Christopher Rivera, Robert Scattini, Al Sciocchetti, Charlet O'Connor, Linda Balbas, Humboldt West Ranches, Celeste Duran, Yuko Duckworth, Nestor Cardenas, Yolanda Espinoza, Robert Hernandez, Nathaniel Garza, Joaquin Garcia, Richard Gallardo, Jose Fonseca, Lindemann Properties, Nader Javid, Daniel Nelson, GPM Construction, Andrew Mims, Sergio Lostanau, and Oscar Lostanau

²⁸ IID February 23, 2015 Comments to Draft Resolution E-4707, p.2

received. Instead, the IE states that SCE's previous RPS solicitation evaluation approach was different than its 2013 RPS solicitation evaluation, which was approved by D.13-11-024.²⁹

IID further recommends that the draft resolution be modified so that it does not categorically accept or adopt SCE's modified LCBF methodology because SCE's assumptions for calculating transmission upgrade costs for projects interconnecting to IID are speculative and potentially incorrect.

As stated above in this Resolution, when the Commission approved SCE's 2013 RPS procurement plan in D.13-11-024, SCE's 2013 RPS solicitation protocols were also approved. Therefore IID's recommendation regarding accepting SCE's protocol in this Resolution is not relevant because the protocols had been vetted by parties and approved by the Commission prior to this Resolution. Accordingly, we do not modify the draft resolution.

Lastly, in its comments, IID expresses its concerns regarding SCE's LCBF criteria, specifically, the accuracy of criteria, the transparency of criteria, and the consistency of the criteria with State policy. Consequently, IID recommends that the Commission direct SCE to work with IID, IID developers, and other interested parties in future procurement efforts to assure that there is reasonable consideration of all technical issues and that SCE's evaluation does not unnecessarily impede development of Imperial Valley renewable resources.

We decline to provide the requested specific direction in this Resolution given that IID's concerns regarding the RPS procurement process, including solicitation protocols, is preliminarily scoped in R.15-02-020.³⁰ That said, the Commission will continue to review RPS procurement plans, including protocols, for consistency with Commission decisions, fairness, and transparency.

²⁹ Report of the Independent Evaluator Final Selection Process and Review of the Power Purchase Agreement with Panoche Valley Solar, LLC, Merrimack Energy Group, Inc. and New Energy Opportunities, October 2014, as submitted with SCE Advice Letter 3119-E, p.49.

³⁰ See *Order Instituting Rulemaking to Continue Implementation and Administration, and Consider Further Development of California Renewables Portfolio Standard Program* at 6

The Joint Parties request that the Commission delay approving the PPA until environmental reviews are completed

In the Joint Parties comments, they request that the Commission delay approving the Panoche AL until federal and state agencies complete their environmental review because the Joint Parties question the viability of the project and its benefits to SCE's ratepayers. In support of their recommendation, the Joint Parties refer to California Department of Fish and Wildlife (CDFW) comments to San Benito County regarding the supplemental environmental impact report for the Panoche project. Based on the CDFW comments the Joint Parties argue that there is likelihood that the Panoche project will not be viable, will not meet the terms of the PPA, and/or violate environmental laws. Specifically, the Joint Parties assert that the CDFW comments indicate that more time is needed to obtain necessary permits due to need for additional surveys, the project size may decrease due to need for increase in buffer zone size, and the project will violate environmental laws if it remains as currently designed without the aforementioned required changes.

As stated above in this resolution, our review and approval of the PPA is a separate from any required land use permitting process and related environmental reviews. In addition, it is not a required for Commission approval. Thus, we decline to delay Commission approval of the Panoche AL on this basis.

FINDINGS

1. The Panoche Valley Solar, LLC power purchase agreement is consistent with SCE's 2013 Renewables Portfolio Standard Procurement Plan, as approved by D.13-11-024.
2. The Panoche Valley Solar, LLC power purchase agreement was evaluated consistent with the LCBF methodology described in SCE's 2013 RPS Procurement Plan.
3. The Panoche Valley Solar, LLC power purchase agreement compares reasonably from a net market value and cost basis relative to RPS offers received in SCE's 2013 RPS solicitation.
4. Payments made by SCE pursuant to the Panoche Valley Solar, LLC power purchase agreement are fully recoverable in rates over the life of the power purchase agreement, subject to Commission review of SCE's administration

of the power purchase agreement and any other applicable Commission review.

5. The Panoche Valley Solar, LLC power purchase agreement includes the Commission adopted Renewables Portfolio Standard “non-modifiable” standard terms and conditions, as set forth in D.08-04-009, D.08-08-028, D.10-03-021, as modified by D.11-01-025, and D.13-11-024.
6. Consistent with D.11-12-052, SCE provided information in Advice Letter 3119-E regarding the expected portfolio content category classification of the renewable energy credits to be procured pursuant to the Panoche Valley Solar, LLC power purchase agreement.
7. Because the Panoche Valley Solar, LLC power purchase agreement is longer than 10 years, the long-term contracting requirement does not apply to SCE’s procurement pursuant to the Panoche Valley Solar, LLC power purchase agreement, and the Panoche Valley Solar, LLC power purchase agreement will contribute to SCE’s long-term contracting requirement established in D.12-06-038 for Compliance Period 2014-2016.
8. Consistent with D.06-05-039, an independent evaluator oversaw SCE’s Renewables Portfolio Standard procurement process.
9. Consistent with D.02-08-071, SCE’s Procurement Review Group participated in the review of the Panoche Valley Solar, LLC power purchase agreement.
10. The Panoche Valley Solar, LLC power purchase agreement is not covered procurement subject to the Emissions Performance Standard because the generating facility has a forecast annualized capacity factor of less than 60 percent and therefore is not baseload generation under paragraphs 1(a)(ii) and 3(2)(a) of the Adopted Interim Emissions Performance Standard Rules.
11. It is reasonable to expect that Panoche will be able to meet the terms and conditions in the Panoche Valley Solar, LLC power purchase agreement.

12. Imperial Irrigation District's protest recommending SCE AL 3119-E be rejected without prejudice is denied.
13. The Office of Ratepayer Advocates' protest and the joint protest of Audubon California, Defenders of Wildlife, Santa Clara Audubon, and the Sierra Club recommending rejection of SCE AL 3119-E are denied.
14. Procurement pursuant to the Panoche Valley Solar, LLC power purchase agreement must be procurement from an eligible renewable energy resource certified by the CEC for purposes of determining SCE's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Sections 399.11, et seq.), D.03-06-071 and D.06-10-050, or other applicable law on or before the first delivery of energy.
15. The confidential appendices, marked "[REDACTED]" in the public copy of this Resolution, as well as the confidential portions of the advice letter, remain confidential at this time.
16. Advice Letter 3119-E should be approved and effective today.

THEREFORE IT IS ORDERED THAT:

1. The request of the Southern California Edison Company for review and approval of a power purchase agreement with Panoche Valley Solar, LLC as requested in Advice Letter AL 3119-E is approved without modification.

This Resolution is effective today.

I certify that the foregoing resolution was duly introduced, passed and adopted at a conference of the Public Utilities Commission of the State of California held on March 12, 2015; the following Commissioners voting favorably thereon:

TIMOTHY J. SULLIVAN
Executive Director

Confidential Appendix A

Evaluation Summary of the Panoche PPA

[Redacted]

Confidential Appendix B

Excerpt from the Independent Evaluator Report on the
Panoche PPA³¹

[Redacted]

³¹ Excerpt from: Report of the Independent Evaluator Final Selection Process and Review of the Power Purchase Agreement with Panoche Valley Solar, LLC, Merrimack Energy Group, Inc. and New Energy Opportunities, October 2014, as submitted with SCE Advice Letter 3119-E.